

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PENSKE MEDIA CORPORATION,

Plaintiff-Counterclaim Defendant,

-against-

SHUTTERSTOCK, INC.,

Defendant-Counterclaim Plaintiff.

Case No. 20-cv-04583 (MKV)

DECLARATION OF ELEANOR M. LACKMAN

ELEANOR M. LACKMAN declares as follows:

1. I am a Partner at the law firm of Mitchell Silberberg & Knupp LLP, counsel for defendant-counterclaim plaintiff Shutterstock, Inc. (“Shutterstock”). I submit this declaration in support of Shutterstock’s Opposition to plaintiff-counterclaim defendant Penske Media Corporation’s (“PMC”) Motion for Partial Summary Judgment.

2. Attached hereto as **Exhibit A** is a true and correct copy of relevant excerpts from the transcripts of the depositions of Jay Penske, CEO of PMC, in his individual capacity, taken on November 18, 2021 and February 3, 2022.

3. Attached hereto as **Exhibit B** is a true and correct copy of the transcript of the deposition of Karl Walter, Senior Director of PMC, in his individual capacity and as PMC’s designated Fed. R. Civ. P. 30(b)(6) witness on certain topics, taken on January 18 and 19, 2022.

4. Attached hereto as **Exhibit C** is a true and correct copy of the transcript of the deposition of Judith Margolin, in her individual capacity and as PMC’s designated Fed. R. Civ. P. 30(b)(6) witness on certain topics, taken on December 10, 2021.

5. Attached hereto as **Exhibit D** is a true and correct copy of a document produced by Shutterstock Bates-numbered SSTK030767-74, and marked at Ms. Margolin's deposition as Exhibit 18.

6. Attached hereto as **Exhibit E** is a true and correct copy of a document produced by PMC Bates-numbered PMC_0021693-96, and marked at Ms. Margolin's deposition as Exhibit 19.

7. Attached hereto as **Exhibit F** is a true and correct copy of relevant excerpts from the transcript of the deposition of Jon Oringer, in his individual capacity, taken on December 8, 2021.

8. Attached hereto as **Exhibit G** is a true and correct copy of relevant excerpts from the transcript of the deposition of Benjamin Pfeifer, in his individual capacity, taken on December 17, 2021.

9. Attached hereto as **Exhibit H** is a true and correct copy of relevant excerpts from the transcript of the deposition of Todd Greene, in his individual capacity and as PMC's Fed. R. Civ. P. 30(b)(6) witness on certain topics, taken on February 2, 2022.

10. Attached hereto as **Exhibit I** is a true and correct copy of relevant excerpts from the transcript of the deposition of George Grobar, in his individual capacity and as PMC's Fed. R. Civ. P. 30(b)(6) witness on certain topics, taken on February 10, 2022.

11. Attached hereto as **Exhibit J** is a true and correct copy of a document produced by PMC Bates-numbered PMC_0002137-42, and marked at Mr. Grobar's deposition as Exhibit 4.

12. Attached hereto as **Exhibit K** is a true and correct copy of a document produced by PMC Bates-numbered PMC_021292-301.

13. Attached hereto as **Exhibit L** is a true and correct copy of relevant excerpts from the transcript of the deposition of Stan Pavlovsky, in his individual capacity, taken on February 18, 2022.

14. Attached hereto as **Exhibit M** is a true and correct copy of relevant excerpts from the transcripts of the depositions of Candice Murray, in her individual capacity and as Shutterstock's Fed. R. Civ. P. 30(b)(6) witness on certain topics, taken on December 13 and 14, 2021.

15. Attached hereto as **Exhibit N** is a true and correct copy of relevant excerpts from the transcript of the deposition of Benjamin Melvin, in his individual capacity and as Shutterstock's Fed. R. Civ. P. 30(b)(6) witness on certain topics, taken on February 8, 2022.

16. Attached hereto as **Exhibit O** is a true and correct copy of relevant excerpts from the transcript of the deposition of Steve Sammut, in his individual capacity, taken on December 7, 2021.

17. Attached hereto as **Exhibit P** is a true and correct copy of a document produced by PMC Bates-numbered PMC_0022834-37.

18. Attached hereto as **Exhibit Q** is a true and correct copy of relevant excerpts from the transcript of the deposition of Lauren Gullion, in her individual capacity, taken on December 23, 2021.

19. Attached hereto as **Exhibit R** is a true and correct copy of relevant excerpts from the transcript of the deposition of Eric Rachlis, in his capacity as Shutterstock's expert witness, taken on February 14, 2022

20. Attached hereto as **Exhibit S** is a true and correct copy of a document produced by PMC Bates-numbered PMC_0020975-20976, and marked at Mr. Grobar's deposition as Exhibit 10.

21. Attached hereto as **Exhibit T** is a true and correct printout of a March 11, 2021 statement made by The White House, entitled "Fact Sheet: President Biden to Announce All Americans to be Eligible for Vaccinations by May 1, Puts the Nation on a Path to Get Closer to Normal by July 4th," which was captured from the URL <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/11/fact-sheet-president-biden-to-announce-all-americans-to-be-eligible-for-vaccinations-by-may-1-puts-the-nation-on-a-path-to-get-closer-to-normal-by-july-4th/>.

22. Attached hereto as **Exhibit U** is a true and correct copy of a document produced by PMC Bates-numbered PMC_0020956-57.

23. Attached hereto as **Exhibit V** is a true and correct copy of a document produced by Shutterstock Bates-numbered SSTK161779-81.

24. Attached hereto as **Exhibit W** is a true and correct copy of a document produced by PMC Bates-numbered PMC_0014957-62, and marked at Mr. Walter's deposition as Exhibit 38.

25. Attached hereto as **Exhibit X** is a true and correct copy of a document produced by PMC Bates-numbered PMC_0021280-84, and marked at Mr. Greene's deposition as Exhibit 2.

26. Attached hereto as **Exhibit Y** is a true and correct copy of a document produced by PMC Bates-numbered PMC_0021385-88, and marked at Mr. Greene's deposition as Exhibit 25.

27. Attached hereto as **Exhibit Z** is a true and correct copy of a document produced by PMC Bates-numbered PMC_022851-59.

28. Attached hereto as **Exhibit AA** is a true and correct copy of a document produced by PMC Bates-numbered PMC_0022535-37.

29. Attached hereto as **Exhibit BB** is a true and correct copy of a document produced by Shutterstock Bates-numbered SSTK111587-88, and marked at Mr. Penske's deposition as Exhibit 20.

30. Attached hereto as **Exhibit CC** is a true and correct copy of a document produced by PMC Bates-numbered PMC_0022929-31, and marked at Mr. Penske's deposition as Exhibit 43.

31. Attached hereto as **Exhibit DD** is a true and correct copy of a document produced by Shutterstock Bates-numbered SSTK111575-82, and marked at Mr. Penske's deposition as Exhibit 4.

32. Attached hereto as **Exhibit EE** is a true and correct copy of a document produced by Shutterstock Bates-numbered SSTK111626-27.

33. Attached hereto as **Exhibit FF** is a true and correct copy of a July 16, 2015 blog post captured by my office at my direction on April 18, 2023 from the URL <http://blog.melchersystem.com/shutterstocks-gamble/>.

34. Attached hereto as **Exhibit GG** is a true and correct copy of relevant excerpts from the transcript of the deposition of Gerry Byrne, in his individual capacity, taken on January 26, 2022

35. Attached hereto as **Exhibit HH** is a true and correct copy of a documents produced by PMC Bates-numbered PMC_0019609-15.

36. Attached hereto as **Exhibit II** is a true and correct copy of a documents produced by PMC Bates-numbered PMC_0021285.

37. Attached hereto as **Exhibit JJ** is a true and correct copy of a documents produced by PMC Bates-numbered PMC_0015928-29, and marked at Mr. Grobar's deposition as Exhibit 7.

38. Attached hereto as **Exhibit KK** is a true and correct copy of a documents produced by PMC Bates-numbered PMC_008848-50, and marked at Mr. Penske's deposition as Exhibit 27.

39. Attached hereto as **Exhibit LL** is a true and correct copy of a documents produced by PMC Bates-numbered PMC_0010175, and marked at Mr. Penske's deposition as Exhibit 28.

40. Attached hereto as **Exhibit MM** is a true and correct copy of a documents produced by PMC Bates-numbered PMC_0015971-72, and marked at Mr. Grobar's deposition as Exhibit 9.

41. Attached hereto as **Exhibit NN** is a true and correct copy of a documents produced by PMC Bates-numbered PMC_0016287-88, and marked at Mr. Pavlovsky's deposition as Exhibit 17.

42. Attached hereto as **Exhibit OO** is a true and correct copy of a document produced by PMC Bates-numbered PMC_0022819-20, and marked at the deposition of Heidi Garfield, in her individual capacity\, as Exhibit 4.

43. Attached hereto as **Exhibit PP** is a true and correct copy of a document produced by PMC Bates-numbered PMC_0020980-83, and marked at Ms. Garfield's deposition as Exhibit 6.

44. Attached hereto as **Exhibit QQ** is a true and correct copy of a document produced by PMC Bates-numbered PMC_0021820-21, and marked at Ms. Margolin's deposition as Exhibit 11.

45. Attached hereto as **Exhibit RR** is a true and correct copy of a document produced by PMC Bates-numbered PMC_0022822-23, and marked at Ms. Garfield's deposition as Exhibit 7.

46. Attached hereto as **Exhibit SS** is a true and correct copy of a document produced by Shutterstock Bates-numbered SSTK111589-90, and marked at Ms. Garfield's deposition as Exhibit 8.

47. Attached hereto as **Exhibit TT** is a true and correct copy of a document produced by Shutterstock Bates-numbered SSTK024717.

48. Attached hereto as **Exhibit UU** is a letter from William A. Delgado, on behalf of Variety, to Andrew J. Thomas, Esq., on behalf of Getty, which was forwarded to Ben Pfeifer by Jay Penske on July 27, 2015.

49. On December 2, 2022, PMC produced an Excel spreadsheet containing metadata associated with the images maintained in what PMC and its counsel refer to as a "Lightbox." (This was an updated version of the Excel spreadsheet initially produced by PMC on November 3, 2022, *i.e.*, after the close of discovery.) PMC's counsel and Karl Walter have represented in their declarations that these Lightbox images were "taken between July 17, 2020 through June 30, 2020." This is not clear from the metadata, which contains multiple "date" fields—specifically, "Capture Date," "CREDATE" (it is not clear what this refers to), and "Date Uploaded." In some instances, these fields are inconsistent and contain dates before July 17, 2020 and/or after June 30, 2020. For example, the image with the file name "WW_Dior.1.jpg" has a "Capture Date" of May 7, 2021, but a "CREDATE" of "2019:01:25" and a "Date Uploaded" of November 28, 2021. More than 6,000 images have a "Capture Date" in June 2021, which is toward the very end of the nature term of the parties' Agreement. Another roughly 526 images have a "Capture Date" on or after July 23, 2021. Aside from the dates, the metadata make clear that many of these images were taken at events that do not relate to entertainment or fashion, such as the "MAGA Rally in Beverly Hills" and "Juneteenth 2021."

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: Los Angeles, California
April 19, 2023



ELEANOR M. LACKMAN